



2026:AHC:11471

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 38648 of 2025

Smt. Varsha And Another

.....Petitioner(s)

Versus

State Of Uttar Pradesh And 2 Others

.....Respondent(s)

Counsel for Petitioner(s) : Ramesh Kumar
Counsel for Respondent(s) : C.S.C.

Court No. - 81

HON'BLE VIVEK KUMAR SINGH, J.

1. Instructions produced by learned Standing Counsel are taken on record.
2. Heard Sri Ramesh Kumar, learned counsel for the petitioners and Sri Vijay Kumar Srivastava, learned Standing Counsel for the State-respondents.
3. By means of the present writ petition, the petitioners have prayed for a writ in the nature of mandamus directing the respondents not to interfere in their peaceful marital life.
4. This writ petition has been filed by the petitioners, who claim to have attained the age of majority and to have solemnized their marriage of their own free will. The allegation of the petitioners is that they are being harassed by the respondent no.3, who happens to be father of the petitioner no.1. Therefore, they seek protection from this Court to secure their life and liberty.
5. The learned counsel for the petitioners submits that petitioner no. 1 is aged about 23 years, as her date of birth, recorded in the High School Examination Certificate is 17.07.2002, a copy of which has been appended as Annexure No. 1 to the writ petition. It is further submitted that petitioner no. 2 is also a major boy, aged about 20 years, and as per his High School Examination Certificate, his date of birth is 10.08.2005, a copy of which has been appended as Annexure No. 2 to the writ petition.
6. It is further submitted that although petitioner no. 2 has attained the age of

majority but he has not attained the marriageable age as prescribed under the Hindu Marriage Act, 1955 (hereinafter referred to as the "Act, 1955"). It is submitted that the petitioners, having fallen in love and being desirous of marrying each other, solemnized their marriage on 28.10.2025 at Arya Samaj, Bareilly, as the father of petitioner no. 1 did not accord his consent. A copy of the marriage certificate dated 28.10.2025 has been appended as Annexure No. 3 to the writ petition.

7. The learned Standing Counsel vehemently argues that the marriage claimed by the petitioners is void. In support of his submission, he places reliance upon the provisions of Section 12(a) of The Prohibition of Child Marriage Act, 2006 (hereinafter referred to as the "Act, 2006"). It is, thus, contended that the petitioner no.2 falls within the definition of a 'child' under the Act, 2006 and he cannot solemnize the marriage, therefore, the marriage claimed by the petitioners is null and void. In the alternative, learned Standing Counsel submits that the marriage claimed by the petitioners is voidable at the option of the petitioners. He further submits that the present writ petition deserves to be dismissed at this stage.

8. Therefore, I first need to examine as to whether the marriage is void or only voidable, in terms of the Act of 2006. Sections 3 & 12 of the said Act are reproduced hereinunder:-

"3. Child marriages to be voidable at the option of contracting party being a child.-

(1) Every child marriage, whether solemnised before or after commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.

(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next

friend alongwith the Child Marriage Prohibition Officer.

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.

(4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:

Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.

12. Marriage of a minor child to be void in certain circumstances.- Where a child, being a minor

(a) is taken or enticed out of the keeping of the lawful guardian; or

(b) by force compelled, or by any deceitful means induced to go from any place; or

(c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is marriage after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void."

9. Thus, it is seen that as per Section 3, the marriage is voidable at the instance of the minor, provided that such petition for declaring the marriage to be voidable if filed by the child, upto 2 years of having attained majority.

That situation, obviously, has not come about as yet.

10. Coming next to Section 12 of the said Act, which declares marriage of a minor child to be void in certain circumstances, what is argued by learned Standing Counsel is with regard to clause (a) of the said Section, which stipulates that a marriage would be void when a child/minor, is taken or enticed out of the keeping of the lawful guardian.

11. Before advertiring to the arguments so raised by the learned Standing Counsel, it is relevant to mention here that this Court in case of **Sonu Paswan Vs. State of U.P., 2013 (83) ACC (1)**, after considering the provisions of the Act, 1955 and the Act, 2006 categorically opined that marriage of a minor below the marriageable age would not be void but voidable at the option of the child, who has not attained the marriageable age at the time of marriage. Also, in that case the Court considered the provisions of Guardians & Wards Act, 1890 and concluded that there is no bar if a minor acts as a guardian of his own wife. Thus the Court held as under:-

"21. Even, if it is considered that Rekha Devi is a minor, her marriage is not void ab initio under the provisions of Hindu Marriage Act.

22. The marriage would be voidable under the Act of 2006, only if Rekha Devi files a petition for that purpose. In the case in hand, however, Rekha Devi states that she got married to Sonu Paswan, i.e. the petitioner, and wants to live with him in her matrimonial home. The marriage is not void under Section 12 of the Act of 2006 in so much as the conditions stipulated in the said provision are not existence in this case.

23. 23. Under Section 21 of the Guardian and Wards Act, 1890, a minor can act as a guardian of his own wife or child. Under the Hindu Minority and Guardianship Act, 1956, Clause 'C' of Section 6, in the case of married girl, the husband would be the guardian"

12. A full Bench of the Delhi High Court, presided by A K Sikri, ACJ, as his lordship then was, in Court in Its Own Motion (Lajja Devi) Vs. State 2014(1) JIC 198 (Del)(FB) after discussing the entire gamut of legislation on the subject, concluded thus:-

"Be as it may, having regard to the legal statutory position

that stands as of now leaves as to answer first part of question No.1 by concluding that the marriage contracted with a female of less than 18 years or a male of less than 21 years would not be a void marriage but voidable one, which would become valid if no steps are taken by such "child" within the meaning of Section 2(a) of the PCM Act, 2002 under Section 3 of the said Act seeking declaration of this marriage as void."

13. The Hon'ble Apex Court in similar circumstances, where one of the party/ boy had not attained marriageable age i.e. 21 years, granted protection and it is held by the Hon'ble Supreme Court in case of **Nandakumar and another Vs. State of Kerala and others reported in 2018 (16) SCC 602** that at the most the marriage under the circumstances would be voidable marriage. The relevant paragraph Nos. 8, 9 and 10 of **Nandakumar (supra)** are reproduced hereunder:-

"[8] Learned counsel for the appellants is right in his submission. Even the counsel for the State did not dispute the aforesaid position in law and, in fact, supported this submission of the learned counsel for the appellants. Insofar as marriage of appellant No. 1 (who was less than 21 years of age on the date of marriage and was not of marriageable age) with Thushara is concerned, it cannot be said that merely because appellant No. 1 was less than 21 years of age, marriage between the parties is null and void. Appellant No. 1 as well as Thushara are Hindus. Such a marriage is not a void marriage under the Hindu Marriage Act, 1955, and as per the provisions of section 12, which can be attracted in such a case, at the most, the marriage would be a voidable marriage.

[9] Section 5 and Section 12 of the Hindu Marriage Act make this position clear which are reproduced below:

"5. Conditions for a Hindu marriage.-A Marriage may be solemnised between any two Hindus, if the following conditions are fulfilled, namely -

xxxx xxxx xxxx xxxx

(iii) the bridegroom has completed the age of twenty one years and the

bride, the age of eighteen years at the time of the marriage;"

12. Voidable marriages.-

(1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-

1(a) that the marriage has not been consummated owing to the impotence of the respondent: or (b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, the 1978 (2 of 1978), the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner."

[10] We need not go into this aspect in detail. For our purposes, it is sufficient to note that both appellant No. 1 and Thushara are major. Even if they were not competent to enter into wedlock (which position itself is disputed), they have right to live together even outside wedlock. It would not be out of place to mention that "live-in relationship" is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005."

14. Admittedly, the girl/ petitioner no.1 is a major and competent to act on her own and be held responsible for her act, thus, her father cannot, at this stage, be heard to say that his daughter who is otherwise major, has enticed a minor boy and the marriage of his daughter, therefore, void. The girl being a major and there being no complaint by the guardian of the boy, the objections raised by the learned Standing Counsel appears to be both misconceived and in any case premature. This Court at this stage is only

examining the issue of security of the life of the petitioners.

15. On the other hand, under Section 3 of the Act, 2006 and Section 5/12 of the Act, 1955 such a marriage may be voidable. However, from a plain reading of that provisions, it is clear that the marriage would be voidable only by a contracting party to the marriage, who was a child in view of the aforesaid Acts. Also, such issues cannot be examined in the present proceedings. Thus, the present writ petition is wholly maintainable.

16. As already noted, without expressing any opinion on the merits of the validity of the marriage at this stage, I am of the view that what needs to be addressed is the apprehension of the petitioners based on threat to their life and liberty for the reasons/circumstances as narrated in the petition.

17. Controversy that needs adjudication now is whether an appropriate writ/direction or order is warranted to allay the apprehensions of the petitioners for granting protection to them for enforcement of their fundamental rights under Article 21 of the Constitution of India.

18. I am conscious of the fact that even though the girl is major, but neither the boy is major nor of marriageable age. Their marriage, therefore, even if assumed to have taken place according to Hindu Rites and Rituals is in violation of Section 5 (iii) of the Hindu Marriage Act. Section 5, envisages statutory pre-requisites for the consenting parties to solemnize marriage between them. Sub Section (iii) thereof stipulates the minimum ages of a bridegroom and a bride. Section 5 reads as under:-

"Conditions for a Hindu marriage. A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:

(i) neither party has a spouse living at the time of the marriage; [(ii) at the time of the marriage, neither party

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an

extent as to be unfit for marriage and the procreation of children; or

*(c) has been subject to recurrent attacks of insanity [***];]*

(iii) the bridegroom has completed the age of [twenty-one years] and the bride, the age of [eighteen years] at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;"

19. A perusal of Section 5, *ibid* leaves no manner of doubt that one of the essential conditions of Hindu Marriage Act is that the bridegroom must be above 21 years and the bride above 18 years. However, at the same time, Section 11 of the Act, 1955, which declares certain marriages, which are in contravention of Section 5 (*supra*), to be void, but precludes a marriage solemnized in contravention of Sub Section (iii) of Section 5, *ibid* from the purview of being regarded as void or invalid.

20. I find support to my above sentiments from a Division Bench judgment rendered by Delhi High Court in case titled as **Jitender Kumar Sharma Vs. State and Another** reported as **2001 (7) AD (Delhi) 785**. The relevant whereof is extracted hereinbelow:-

*"It is true that one of the conditions of a hindu marriage is that the bride should have completed 18 years age and the bridegroom, 21 years. But, does this mean that a marriage where this twin condition as to ages is not satisfied is, *ipso facto*, invalid or void? An examination of Section 11 of the HMA would seem to suggest otherwise. The said provision is as under:-*

11. Void marriages- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either

party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.

Though five conditions have been stipulated in Section 5, only the contravention of three of them, namely, clauses (i) (iv) and (v) would render the marriage to be null and void. Clause (iii) of section 5, which is the condition with regard to the minimum ages of the bride and bridegroom, is conspicuous by its absence. As a result, a hindu marriage solemnized in contravention of clause (iii) of section 5 of the HMA cannot be regarded as a void or invalid marriage. We are not oblivious of section 18 of the HMA which prescribes punishment for contravention of certain conditions for a hindu marriage. It reads as under:-

18. Punishment for contravention of certain other conditions for Hindu marriage.- Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv) and (v) of Section 5 shall be punishable-

a) in the case of contravention of the condition specified in clause (iii) of Section 5, with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both;

b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of Section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

*c) (***)*

But, the fact that punishment has been provided for contravention of the condition specified in section 5 (iii) of the HMA does not mean that the marriage itself is void or invalid. If the legislature had intended that such a marriage would be void or invalid, it could have easily included clause (iii) of section 5 in Section 11 itself. Only clauses (i), (iv) and (v) of section 5 are specifically mentioned in section 11. The only conclusion is that the legislature consciously left out marriages in contravention of the age stipulation in clause (iii) of section 5 from the category of void or

invalid marriages.

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Before we proceed further, under Hindu law there are essentially two kinds of marriages-void marriages or valid marriages. The latter category has a sub-category of voidable marriages. A marriage in contravention of clause (iii) of section 5, as we have seen above, does not fall in the category of void marriages specified in section 11 of the HMA nor does it fall in the category of voidable marriages specified in section 12. Consequently, by the process of elimination, it would be a valid marriage. Of course, the marriage may be dissolved through a decree of divorce, but, that would have to be on the grounds specified in section 13 of the HMA. Interestingly, section 13 (2) (iv) enables a 'wife' to petition for dissolution of her marriage on the ground:-

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

What does this show? It shows that even a marriage of a minor girl below the age of fifteen is regarded as valid and can only be dissolved on her petition, provided she repudiates the marriage between the time she is 15 years old and 18 years old."

21. Reverting to the present case, in light of the aforesaid background and the judgment rendered by Delhi High Court, it appears from the documents appended herein that the petitioners have not solemnized a valid marriage as per Sub Section (iii) of Section 5 of the Hindu Marriage Act and may be required to satisfy the validity of their marriage before an appropriate Forum in the event of same being put to challenge.

22. The issue in hand, however, is not marriage of the petitioners, but the deprivation of fundamental right of seeking protection of life and liberty. I have no hesitation to hold that Constitutional Fundamental Right under Article 21 of Constitution of India stands on a much higher pedestal. Being sacrosanct under the Constitutional Scheme it must be protected, regardless

of the solemnization of an invalid or void marriage or even the absence of any marriage between the parties.

23. It is the bounden duty of the State as per the Constitutional obligations casted upon it to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen being minor or a major. The mere fact that the petitioner No.2 is not of marriageable age in the present case would not deprive him of his fundamental right as envisaged in Constitution of India, being citizen of India.

24. In **Lata Singh vs. State of UP 2006 Cr.L.J. 3309**, while dealing with a case of harassment by the parents of the boy and girl, who had entered into inter-caste marriage, Hon'ble Supreme Court has issued directions to the Administration/Police authorities throughout the country in the following terms:-

"This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law."

25. In **Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396** Hon'ble Supreme Court held in paragraph 28 and 29 as under:-

"28. Often young couples who fall in love have to seek shelter in the police lines or protection homes, to avoid the wrath of kangaroo courts.

We have held in Lata Singh case that there is nothing "honourable" in "honour" killings, and they are nothing but barbaric and brutal murders by bigoted persons with feudal minds. In our opinion honour killings, for whatever reason, come within the category of the rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilised behavior. All persons who are planning to perpetrate "honour" killings should know that the gallows await them.

29. *Let a copy of this judgment be sent to the Registrars General/ Registrars of all the High Courts who shall circulate the same to all the Judges of the Courts. The Registrars General/ Registrars of the High Courts will also circulate copies of the same to all the Sessions Judges/ Additional Sessions Judges in the States/Union Territories. Copies of the judgment shall also be sent to all the Chief Secretaries/ Home Secretaries/ Directors General of Police of all States/ Union Territories in the country. The Home Secretaries and Directors General of Police will circulate the same to all SSPs/SPs in the States/Union Territories for information."*

26. It is contended by learned Standing Counsel that the above observations and directions issued by the Supreme Court are being enforced in the State of UP and that no further direction is required to be issued by this Court at this stage as it is a mere apprehension of the petitioners that the private respondents may commit some act of violence and or harass the petitioners.

27. Considering the facts and circumstances of the case, but without prejudice to the merits of the case, the writ petition is finally disposed off with the direction that the petitioners are at liberty to live together being a married couple and no person shall be permitted to interfere in their peaceful living. In case, any disturbance is caused in the peaceful living of the petitioners, the petitioners shall approach the Senior Superintendent of Police or Superintendent of Police concerned with a copy of this order, who will examine the matter and shall provide immediate protection to the petitioners. The Police authority shall also ensure that an innocent person should not be harassed or humiliated if he / she has not caused any

hindrance in peaceful married life of the petitioners.

28. It is also directed to the petitioners that the marriage dated 28.10.2025 shall be registered within two months from today, in accordance with the provisions of U.P. Marriage Registration Rules, 2017 and if the petitioners fail to get the marriage registered within stipulated time the protection granted herein would cease to operate.

29. However, it is made clear that this court has not adjudicated the validity of the marriage and/or genuineness of their marriage certificate claimed by the petitioners or the correct age of the petitioners. It is further clarified, this order has not been passed to protect the petitioners against any action or proceedings instituted in accordance with law.

30. Since the petition is being disposed of in limine, any person aggrieved by it is at liberty to apply for its recall, if the order has been obtained by suppression or concealment of facts or on false averments.

31. However, this order would not come in way of investigation, if any, pending before the police authorities.

32. The writ petition is **disposed of** accordingly with above observations.

(Vivek Kumar Singh,J.)

January 16, 2026

Radhika